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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.        | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------------|------------------|
| 09/992,454  | 11/06/2001  | Sven Ake Sjostam     | MISI 8116US                | 7525             |
| 1688 .7590 04/06/2007<br>POLSTER, LIEDER, WOODRUFF & LUCCHESI<br>12412 POWERS COURT DRIVE SUITE 200<br>ST. LOUIS, MO 63131-3615 |             |                      | EXAMINER<br>MATHEW, FENN C |                  |
|   |             |                      | ART UNIT                   | PAPER NUMBER     |
|   |             |                      | 3764                       |                  |

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 04/06/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/992,454 | <b>Applicant(s)</b><br>SJOSTAM, SVEN AKE |  |
|                              | <b>Examiner</b><br>Fenn C. Mathew    | <b>Art Unit</b><br>3764                  |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-8 and 12-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-8, 12-14, 17 and 19-22 is/are rejected.
- 7) ☒ Claim(s) 15, 16 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

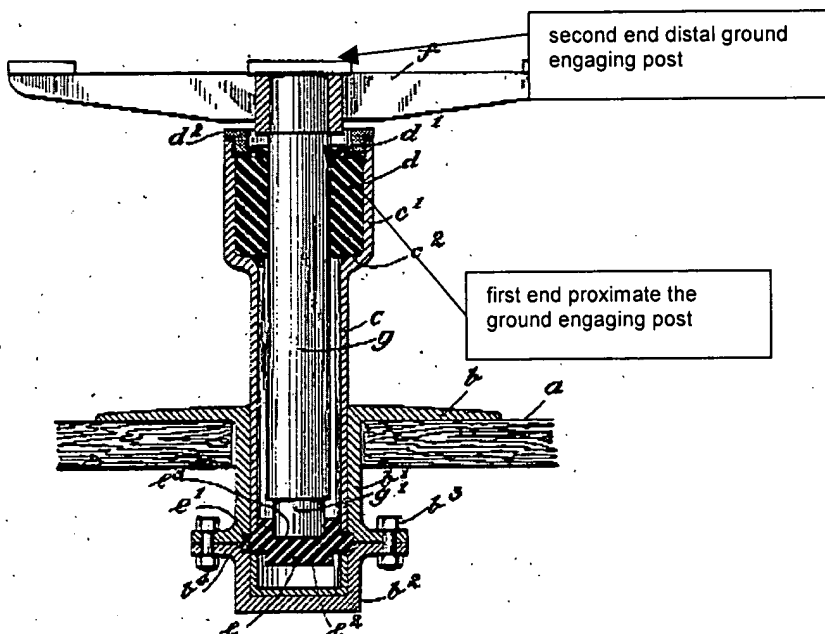
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 8 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 8 and 21 recite the limitation "said inner tube" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is unclear whether Applicant intended to have claims 8 and 21 depend directly from claims 7 and 20 respectively, or whether Applicant erroneously changed 'shell' to 'inner tube'. For purposes of examination, Examiner has assumed that claims 8 and 21 were meant to depend from claims 7 and 20 respectively.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 6, 13, and 22 rejected under 35 U.S.C. 102(b) as being anticipated by Froesch (U.S. 1,731,412). Referring to claim 22, Froesch discloses a device comprising at least one ground engaging post (c), at least one 'play unit' (f) adapted to be climbed upon, the at least one play unit comprising a first end and second and a mounting shaft (g) at at least one of said first and second ends, and at least one connector (d) for mounting the play unit to the ground engaging post, such that the play unit extends

outwardly (as broadly claimed) from the at least one ground engaging post with the first end of the play unit being proximate the at least one ground engaging post and the second end of the play unit being remote from the ground engaging post to which the first end is mounted, the connector comprising means for enabling the play unit to move with a limited dampened swinging movement around an imaginary axis between opposite ends of the play unit, the means comprising a rubber bushing (d) which surrounds the play unit mounting shaft. (Note attached figure below.)



5. Referring to claim 6, Froesch discloses an outer shell (c1) the bushing being contained within the shell. Referring to claim 13, Froesch discloses portions of the connector mounted outside of the post (at approximately c2) (Although shell is integral to the post, it is connected to an 'outer edge' of the post.)

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6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Froesch alone. Froesch teaches the claimed invention except for the connector mounted within the post. The feature of bushing extending into the post is notoriously old and well known in the art in order to provide more cushioning between two engaging members (note previously cited prior art). Absent criticality or unexpected result, it would have been obvious to one of ordinary skill to extend the rubber bushing into the mounting post in order to provide further cushioning between the receiving post and engaging post. (Note bushing is a part of the connector).

8. Claims 3-5, 7, 14, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Froesch in view of Clark. Referring to claims 3-5, Froesch teaches the claimed structural limitations except for the specific shape of the 'play unit'. Specific shapes chosen are considered a matter of obvious choice, as the skilled artisan could choose a variety of different configurations as evidenced by Clark. Note that Clark teaches an approximately ovoid shape with members parallel to the short axis. It would have been obvious to one of ordinary skill in the art to provide Froesch with the 'play unit' of Clark based on suitability for intended use. Absent criticality or unexpected results, various configurations of 'play units' would have been well within the knowledge of the skilled artisan.

With respect to claims 14, 17, and 19, the limitations are substantially similar in scope to the claims addressed above. Note the rejections based on Froesch and Clark.

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9. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Froesch and further in view of Tornero (U.S. 4,720,068). Froesch teaches the claimed invention except for the connector including an inner tube received within the bushing. Tornero discloses in an analogous device, the desirability of providing an inner tube received within a bushing (35), the inner tube receiving the mounting shaft of a play unit. In view of the teachings of Tornero it would have been obvious to one of ordinary skill in the art at the time of invention to provide Froesch with an inner tube received within the bushing, the inner tube receiving the mounting shaft of the play unit in order to prevent direct contact between the bushing and mounting shaft. Referring to claim 8, the use of multiple bushing elements adjacent one another is notoriously old and well known in the art (as an example Engstrom U.S. 3,656,805 teaches multiple bushings), and are thus an obvious art recognized alternative.

10. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Froesch in view of Clark as applied to claim 19 above, and further in view of Tornero. Froesch teaches the claimed invention except for the connector including an inner tube received within the bushing. Tornero discloses in an analogous device, the desirability of providing an inner tube received within a bushing (35), the inner tube receiving the mounting shaft of a play unit. In view of the teachings of Tornero it would have been obvious to one of ordinary skill in the art at the time of invention to provide Froesch with an inner tube received within the bushing, the inner tube receiving the mounting shaft of the play unit in order to prevent direct contact between the bushing and mounting shaft. Referring to claim 21, the use of multiple bushing elements adjacent one another is

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notoriously old and well known in the art (as an example Engstrom U.S. 3,656,805 teaches multiple bushings), and are thus an obvious art recognized alternative.

***Allowable Subject Matter***

11. Claims 15, 16, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

12. Applicant's arguments filed 01/11/2007 have been fully considered. Regarding the rejections of claims 17-18 under 35 U.S.C. 112, second paragraph, the rejection have been withdrawn based on the amendments filed. Likewise, the rejection of claims 15-16 have been withdrawn in light of Applicant's remarks found on page 24 of the response filed 01/11/2007.

13. Examiner respectfully disagrees with all other arguments presented. Examiner reminds Applicant that claims are read in their broadest reasonable light, and that although the claims are read in light of the specification, limitations of the specification are not brought into the claims. With respect to rejections under 35 U.S.C. 102(b), Froesch still meets the claimed limitations. (Note rejections supra.) Applicant attempts to overcome the Froesch through a narrow reading of the claim limitations. As noted above, Froesch still has a first and second end as illustrated supra, with the first end adjacent the ground engaging post, and a second end distant the ground engaging

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post. Furthermore, the phrase "extends generally outwardly" is not limited to perpendicularly extending from ground engaging post, but includes a coaxially extending member. Arguments with regards to the term "play unit" are moot as Applicant has amended the claims thereby creating a *Festo* estoppel. Examiner further notes that Froesch teaches a rubber bushing, and therefore inherently the device can have a degree (regardless of how slight) of limited and dampened swinging movement.

14. Examiner respectfully disagrees with Applicant's assertion regarding the references as non-analogous art. While Examiner appreciates Applicant's quotation of section 2141.01(a), Applicant has neglected to include the additional sections, included section II which states "PTO Classification is some evidence of analogy, but similarities in *structure* (emphasis added) and function carry more weight." In the instant case, Applicant's claims are so broad that it is appropriate to refer to the support art (Class 248) as well as the chair and seat art (class 297). Applicant's claims disclose "playground equipment" in name only and as set forth in the rejections above do not structurally distinguish. Furthermore, Examiner points out that Class 248 and Class 297 are listed as cross-referenced classifications, and classes in which searches for exercise equipment could and should be performed.

15. Regarding the combination of Froesch and Clark, Applicant has attempted to make a piecemeal analysis of the deficiencies of Clark. Examiner points out that Clark was introduced to provide a teaching of an element including opposed side member and a plurality of cross members. The square cross-section of the post of Clark is irrelevant,



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as that is not the teaching relied upon. Limitations drawn to the “generally outwardly extending” as well as the bushing have been addressed above.

16. Regarding the use of multiple bushings, Examiner is unclear with respect to Applicant's arguments. Applicant notes that Engstrom teaches multiple bushings, yet argues that they cannot be considered discrete bushing elements. Examiner respectfully disagrees with this statement, as the claims do not provide any language (outside of an impermissible specification based narrow reading) that would otherwise prevent Engstrom from being regarded as having discrete bushing elements.

17. Applicant's arguments regarding the combination of Froesch and Tornero, and Froesch, Clark, and Tornero do not introduce unique arguments that have not already been discussed.

### ***Conclusion***

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C. Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



F.C. Mathew  
March 30, 2007